

Readopt with amendment Tax 201, eff. 9-24-07 (Document #8986), cited and to read as follows:

CHAPTER Tax 200 RULES OF PROCEDURE

PART Tax 201 RULES APPLICABLE TO ALL PROCEDURES

Tax 201.01 Purpose and Applicability.

(a) This chapter is intended to promote the just, consistent and efficient handling of all proceedings before the board.

(b) This part, as well as Tax 101, shall apply to all board proceedings except as specifically stated.

(c) Because the board's rules or governing statutes address the requirements of RSA 541-A:30-a, the model rules in Jus 800 shall not apply to board procedures.

Tax 201.02 Communications with the Board.

(a) All communications shall be addressed to the board clerk or his/her designee and not to any board member.

(b) Ex parte communications shall be strictly prohibited pursuant to RSA 541-A:36.

(c) All requests for board action shall be made in writing and when appropriate by motion under Tax 201.18.

Tax 201.03 Computation of Time.

(a) In computing any period of time prescribed or allowed by these rules and any statute governing the board, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a federal or state legal holiday or any day on which the filing office, whether the board or a municipality's office, is officially closed for the day or not open during the office's normal hours in accordance with RSA 21:35, RSA 21-J:28-b, VII, RSA 76:16-e and RSA 80:55, III.

(b) Upon determination of accident, mistake or misfortune, the board shall order the period enlarged for complying with deadlines imposed by these rules or board order. Unless authorized by statute, the board shall not enlarge time periods prescribed by statute.

(c) Unless otherwise specified by law, rule or order, when a party is required to act within a certain number of days, that period shall begin on the day after the clerk's certification date written on the order or on the day after the date written on any other communication from the board in accordance with RSA 21:35. The date a party receives the order or other communication shall not be the starting date. The clerk shall mail all orders or other communications on the date indicated on the document.

(d) If a document, tax appeal or abatement application is filed and the envelope in which the document was sent is not available to review the cancellation mark or the cancellation mark is illegible, the document shall be treated as having been mailed 3 days before its receipt by the board unless there is evidence showing a different mailing date in accordance with RSA 80:55, I(b).

Tax 201.04 Default.

(a) This section shall apply to all matters before the board, except for hearing attendance, which shall be governed by Tax 202.065. This section shall establish a procedure for addressing noncompliance with board orders or requests.

(b) A party who fails to respond to or comply with a board order or rule, shall be considered in default.

(c) Upon default, the board shall send the party a default order signed by the clerk or a deputy clerk.

(d) Default orders shall:

(1) Specify how the party has defaulted;

(2) Order the party to cure the default within a specified period; and

(3) Inform the party of the effects of the failure to timely cure the default.

Tax 201.05 Final Default.

(a) This section shall not apply to hearing attendance, which shall be governed by Tax 202.065.

(b) If a party timely complies with a default order, the board shall, without order, proceed with the appeal.

(c) If a party fails to timely cure the default order, **the board shall issue** a final default order ~~shall be issued at the board's direction, signed by the clerk or a deputy clerk,~~ and the effects stated in the default order shall occur.

Tax 201.06 Striking Final Default.

(a) To set aside a final default, a party shall move to strike the final default, stating in the motion the reason the party failed to comply with the board's original order or rule and stating the reason the party failed to timely cure the default once ordered to do so.

(b) The board shall only grant the motion to set aside the final default when the party's failure was due to accident, mistake or misfortune.

Tax 201.07 Appearance and Representation Before the Board.

(a) Any party may appear before the board on his/her/its own behalf, by an attorney upon compliance with Tax 201.09, or by an agent upon compliance with Tax 207.03. The actions or inactions of attorneys or agents shall bind the represented party.

(b) Nothing in this section shall be interpreted to restrict a party's right to conduct a hearing before the board.

(c) Nothing in this section shall be interpreted to allow the unauthorized practice of law in accordance with RSA 311:7.

(d) The person who attends the hearing or a prehearing conference for a party shall either:

(1) Come with the party's authority to make all decisions on the appeal, including the authority to settle the case; or

- (2) Ensure his or her client can be contacted immediately by phone to authorize the agent on specific decisions, including the decision to settle the case.

Tax 201.08 Appearances.

(a) Except as noted below, each party shall file an appearance signed by the party or the party's attorney, agent or municipal consultant, listing:

- (1) The name and docket number of the matter;
- (2) The party for whom the appearance is filed; and
- (3) The appearing person's name, address and daytime phone number.

(b) If an appearance is filed by an attorney, agent or municipal consultant, the appearance shall:

- (1) Comply with paragraph (a) above;
- (2) State the attorney, agent or municipal consultant has the party's authorization to appear and act on the party's behalf; and
- (3) Certify the attorney, agent or municipal consultant:
 - a. Has sent a copy of the appearance to the represented party and the opposing party; and
 - b. Is aware of the restriction in Tax 201.11 on withdrawing the appearance.

(c) In tax appeals, the appeal document shall constitute the appearance of the person signing the document, provided the following requirements are met:

- (1) The information required pursuant to (a) above, excepting the docket number, shall be included in the appeal document and shall constitute the taxpayer's appearance; or
- (2) The information required by (a) and (b) above, excepting the docket number, shall be included in the appeal document in order to constitute the attorney or agent's appearance on behalf of a taxpayer.

(d) If an appearance is filed in an eminent domain proceeding:

- (1) The declaration filed by the condemnor shall constitute the condemnor's appearance, provided the information required by paragraph (a) above, excepting the docket number, was included in the declaration; and
- (2) A condemnee may file a written appearance in accordance with Tax 201.07 and if the condemnee fails to file a written appearance, the board shall consider the condemnee pro se.

(e) Any person or entity who wishes to receive copies of all hearing notices, orders and decisions shall file an appearance as an interested party.

(f) When an appearance has been filed, all communications from the board to the parties shall be made through the attorney, agent or municipal consultant, including sending the attorney, agent or municipal consultant all hearing notices, orders and decisions. However, when an appearance has been filed for a municipality, the board shall send a courtesy copy of all hearing notices, orders and decisions directly to the municipality.

(g) When an appearance has been filed by an attorney, agent or municipal consultant, all communications between the parties shall be made through the person listed on the appearance.

Tax 201.09 Appearances by Attorneys.

(a) An attorney who is a member in good standing of the bar of any court of the United States or of the highest court of any state shall be permitted to practice before the board in a particular action after filing an appearance. An out of state attorney shall include a certification that the attorney's client has been informed, in writing, that the attorney is not admitted to practice law in New Hampshire.

(b) The board shall require an out of state attorney to associate with a New Hampshire attorney if, after a duly noticed hearing, the board determines the attorney is unfamiliar with applicable New Hampshire law and the board's procedures and administrative rules.

(c) The board shall revoke an out of state attorney's permission to represent a party when the board concludes, after a duly noticed hearing:

(1) That the attorney is unfamiliar with applicable New Hampshire law and the board's procedures and administrative rules; and

(2) The attorney's continued representation would be detrimental to the represented party.

(d) All attorneys shall act in accordance with the New Hampshire professional conduct rules.

Tax 201.10 Address and Phone Number/Service of Written Communications.

(a) All documents filed with the board shall include the filing party's mailing address, actual street address and daytime phone number.

(b) Parties shall notify the board of any change in address or phone number.

(c) Unless otherwise required by statute or rule, service of written communications by the board or by parties shall be made by first class mail.

(d) Unless otherwise shown by a party or unless the written communication is returned by the United States Postal Service, written communications mailed in accordance with this rule by the board or the parties shall be deemed to have been received by the person so notified.

Tax 201.11 Withdrawal of Appearance.

(a) An attorney, agent or municipal consultant may withdraw by filing a withdrawal of appearance motion with the board, copying the client and all other parties. The withdrawal motion shall include the party's current address and phone number.

(b) The motion to withdraw appearance shall be automatically granted within 14 days of filing, provided:

(1) There are no pending motions;

(2) No hearing date has been set; and

(3) No party objects.

(c) If the criteria required by (b) above are not met, the board shall review the motion and grant it provided neither party is prejudiced by the withdrawal.

(d) Any objection to a withdrawal of appearance motion shall be filed within 10 days of the filing of the withdrawal of appearance motion and shall state with specificity the reasons for objecting. The objection shall only be sustained if the proceeding has progressed to such a stage that allowing the withdrawal would be unduly prejudicial to the parties or would adversely affect the board's processing the file.

(e) Whenever an attorney or agent withdraws from an action and no other appearance is entered, all future communications shall be sent to the taxpayer or condemnee.

Tax 201.12 Conveyance. If the property subject to a proceeding is conveyed during a tax year or while an appeal is pending, the original taxpayer shall continue to be the party, unless the board, on its own or upon a motion and after notice, directs the person to whom the interest has been transferred to be substituted or joined with the original party. Parties claiming entitlement to their predecessor's rights, such as the predecessor's filing of an abatement application, shall file an assignment of rights from the predecessor to the taxpayer, which shall be signed by the predecessor.

Tax 201.13 Conduct of Parties, Attorneys, Agents and Municipal Consultants. Parties, attorneys, agents and municipal consultants shall conduct themselves in a truthful and respectful manner in all of their dealings with the board and other parties, attorneys and agents.

Tax 201.14 Copies of Filed Documents.

(a) All documents, except the appeal document, filed with the board shall be simultaneously copied to all other parties, but need not be copied to interested parties. The submitting party shall state in the document that a copy was sent to all other parties.

(b) The party filing any memorandum or requests for findings/rulings shall file the original and 3 copies. If a party fails to supply the correct number of copies, the board shall either return the document for copying by the party or copy the document and bill the party for copying costs.

(c) In addition to (b) above, all written communications shall include 1 copy for each referenced docket.

Tax 201.15 Form of Documents.

(a) In addition to complying with all other applicable rules, every document shall include at the beginning of the document:

- (1) The name of the case;
- (2) The docket number;
- (3) The title of the document, for example, "Motion to Continue";
- (4) The name, address and telephone number of the submitting party or the party's attorney or agent; and
- (5) A statement that a copy of the document was sent to all other parties.

(b) All statements of claim or defense shall be made in numbered paragraphs, and each numbered paragraph shall be limited as far as practicable to a statement of a single set of circumstances.

(c) Statements in a document may be adopted by reference in a different part of the same or another document.

(d) A copy of any written instrument that is attached or referenced to a document shall be a part thereof for all purposes.

Tax 201.16 Signing Documents.

(a) Every document shall be signed by the party or the party's attorney, agent or municipal consultant. The document shall include the signer's name, address and telephone number.

(b) The signature on a document, **whether it is an original or a facsimile**, shall constitute a certification:

(1) That the signer has read the document;

(2) That the facts in the document are true to the best of the signer's knowledge formed after reasonable inquiry;

(3) That no pertinent facts have been excluded;

(4) That the party's position on any request is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and

(5) That the document is not submitted for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the litigation costs.

(c) RSA 641:1, RSA 641:2 and RSA 641:3 shall apply to all submitted documents.

Tax 201.17 Nonconforming Documents.

(a) If a party submits a document by ~~any facsimile or electronic mail means~~, that document shall not constitute a filed document as defined in Tax 102.286, unless specifically permitted by the board prior to the submission.

(b) If a party files with the board a document that does not comply with any statute or board rule, the board shall:

(1) Date stamp the document;

(2) Return the document to the submitting party;

(3) Notify the party of the noncompliance; and

(4) Provide the party with 10 days to re-file a conforming document.

(c) If the submitting party timely re-files a conforming document, the document shall be considered as filed on the original filing date.

(d) If the submitting party fails to timely re-file a conforming document, the document shall be considered as filed on the re-filing date, not the original filing date, which could result in the document being untimely filed under a statute, rule or order.

Tax 201.18 Motions and Objections.

(a) All requests for board action shall be made by filing an original and **43** copies of a motion **for each docket** that, unless made during a hearing, complies with all other applicable board rules, and:

- (1) Is in writing unless made on the record at a hearing;
- (2) States with specificity the grounds therefore;
- (3) States the relief sought;
- (4) States compliance with paragraph (b) below on seeking concurrence;
- (5) Is signed in accordance with Tax 201.16;
- (6) Is copied to all other parties; and
- (7) States that a copy was sent to all other parties.

(b) The moving party shall make a good faith attempt to obtain concurrence from the opposing party in the relief sought, except for dispositive motions or other motions where it can reasonably be assumed the moving party will be unable to obtain concurrence. The motion shall recite compliance with this paragraph.

(c) Unless apparent from the record or agreed upon by the parties, the board shall not rely upon any facts in deciding a motion unless the facts and documents relied on in the motion are submitted under certification of truthfulness subject to the penalties of RSA 641:1, RSA 641:2, and RSA 641:3.

(d) An objection to a motion, except as provided in Tax 201.37, shall be filed with the board within 10 days after the motion was filed. Once an objection is filed with the board, no further documents pertaining to the underlying motion shall be accepted from any party unless relief is granted pursuant to Tax 201.41.

(e) Supporting memoranda and documents shall be filed with the motion or objection, unless the board has granted leave for a later filing.

(f) Motions shall be decided with or without an oral hearing. An oral hearing shall be granted on the board's own initiative or upon a party's granted request when the board concludes an oral hearing will materially assist the board or is required to comply with the law.

(g) Any motions for summary judgment shall be filed and considered pursuant to RSA 491:8-a.

(h) The board shall not receive any petitions for declaratory rulings outside the board's statutory authority contained in RSA 71-B:5.

Tax 201.19 Discovery.

(a) Parties may employ discovery to adequately prepare an appeal, provided discovery requests are not overly burdensome based on the type and complexity of the appeal. A party may informally seek information and documents from the other party, but the board shall only enforce formal discovery requests.

(b) Except as modified in these rules, the superior court discovery rules shall apply to all board proceedings.

(c) All written discovery requests shall be in plain and concise language.

(d) Except by leave of the board and only when the moving party demonstrates additional interrogatories are required to ensure full discovery, no party shall serve more than 15 interrogatories on the opposing party.

(e) Before the board accepts any discovery enforcement motion, the moving party shall make diligent efforts, directly with the other party, to obtain compliance. All enforcement motions shall state how compliance was sought.

(f) If a party fails to comply with this or other discovery rules or if a party's discovery request is overly burdensome given the case, the board shall either deny the enforcement motion or issue an order as to which items of discovery requested shall be responded to.

Tax 201.20 Prehearing Submissions and Conferences.

(a) The board may hold prehearing conferences pursuant to RSA 541-A:31, V(c) or may require prehearing submissions.

(b) Prehearing conferences or prehearing submissions are intended to achieve two general goals:

- (1) Prepare the matter for final hearing; and
- (2) Explore settlement.

(c) The prehearing submission shall contain the following:

- (1) Identification of any witnesses that may testify at hearing;
- (2) Any photographs applicable to the appeal;
- (3) Any deed(s) to the property if applicable to the issues on appeal;
- (4) Any appraisal(s) as defined in Tax 102.07 intended to be submitted at hearing; however, any appraisal(s) submitted shall conform to the requirements in board rule Tax 201.34;
- (5) Assessment-record cards for each comparable property intended to be submitted either separately at hearing or in an appraisal;
- (6) Detailed arguments clearly stating the party's position;
- (7) Identification and attachment of any other exhibits that will be submitted at hearing; and
- (8) A statement of the property's market value and resulting assessed value as of April 1 of the tax year under appeal.

(d) Unless granted leave by the board, the parties shall be limited to the arguments, witnesses, exhibits, appraisals, and opinions of market value or tax assessment contained in each respective submission. If a taxpayer fails to make a timely submission, the taxpayer shall be limited to the grounds stated, and the evidence referenced, in the appeal document. If a municipality fails to make a timely submission, the municipality shall be limited to evidence relating only to assessment methodology.

(e) Parties who fail to attend a prehearing conference shall be deemed to have waived:

- (1) The opportunity to present their positions at the prehearing conference, except as presented in writing to the board in the party's prehearing submission; and

(2) The opportunity at the prehearing conference to confront, question or challenge the other party's position and presentation, except as presented in writing to the board in the party's prehearing submission.

(f) A party's nonattendance shall not affect the board's authority to issue a prehearing conference order pursuant to RSA 541-A:31, V(c).

Tax 201.21 Consolidation. In actions involving common questions of law or fact the board shall, upon motion or its own initiative:

- (a) Consolidate part of or all of the actions, including consolidation for hearings and decisions; and
- (b) Make such orders concerning proceedings therein to avoid unnecessary costs or delay.

Tax 201.22 Withdrawal of Case.

(a) The ~~appellant~~/taxpayer may withdraw a case by filing a written withdrawal. The ~~appellant~~/taxpayer shall provide a copy of the withdrawal to the municipality/DRA.

(b) The withdrawal shall be accepted and the matter marked "withdrawn; no further action" except the municipality shall have 10 days from the clerk's date on the order to file a request for costs under Tax 201.39.

(c) A withdrawal shall terminate the board's consideration of a matter, and once the file has been so marked, the ~~appellant~~/taxpayer shall not rescind the withdrawal. A withdrawal shall not be considered a board decision unless the withdrawal is filed with a settlement agreement in accordance with Tax 201.23.

Tax 201.23 Settlement and Stipulations.

(a) Settlements between the parties shall be encouraged in accordance with RSA 541-A:31, V. Parties shall attempt to settle a matter before it is scheduled for a hearing.

(b) All settlement agreements, except those made on the record or recited in an order, shall:

- (1) Be in writing, describing the agreement's material terms;
- (2) Be signed by all parties or their attorneys, agents or municipal consultants; and
- (3) In property tax appeals, the settlement agreement shall state the agreed upon assessment and the year(s) for which the assessment shall apply.

(c) The board shall reject any settlement which would result in disproportionate, illegal, or fraudulent assessment or taxation.

(d) If a matter has been scheduled for a hearing and the parties settle with insufficient time to file the signed settlement agreement before the hearing, either party shall, before the hearing, call the board's clerk and inform her/him of the settlement. The parties shall then, within 30 days of the call to the board, file the settlement agreement.

(e) If the settlement agreement or stipulation is not filed, the board shall notify the parties that unless a party files an objection within 10 days, the docket will be marked: "case settled; no further action, no costs."

Tax 201.24 Filing with Board and Superior Court.

(a) Where the applicable appeal statute authorizes an appeal to the board or the superior court, taking an appeal to one tribunal shall be a waiver of the right to appeal to the other tribunal in accordance with RSA 21-J:28-b, IV, RSA 71-B:11, RSA 76:16-a and RSA 76:17.

(b) If a party has appealed to both the board and the superior court, the board shall:

(1) Order the ~~appellant~~/taxpayer to inform the board when the superior court appeal was taken;

(2) Either:

a. Dismiss the board appeal if the ~~appellant~~/taxpayer first appealed to the superior court; or

b. Retain jurisdiction of the board appeal if the ~~appellant~~/taxpayer first appealed to the board and notify the superior court of the ~~appellant~~/taxpayer's dual appeal; and

(3) Take such other actions it deems appropriate to preserve the ~~appellant~~/taxpayer's right to appeal to one tribunal, such as transferring an appeal to the superior court or accepting an appeal from the superior court.

Tax 201.25 Subpoena.

(a) If witnesses and documents are to be subpoenaed, the board and parties shall follow the procedures used in the superior court in accordance with RSA 71-B:9 and RSA 516.

(b) Any party wishing to subpoena a witness or documents shall comply with RSA 516. The board shall not issue subpoenas to parties wishing to subpoena witnesses or documents.

(c) The party shall prepare and serve its own subpoena, which:

(1) Includes the name and docket number of the case;

(2) Is in the form required by RSA 516; and

(3) Is signed by a justice of the peace as required by RSA 516:3.

(d) When the board issues a subpoena to a witness, the board shall comply with RSA 516 and RSA 71-B:9.

(e) Subpoenas shall be served at least 10 days before the hearing date for which the witness is being subpoenaed.

(f) A subpoenaed witness may move to quash the subpoena by filing a motion to quash, stating in the motion the grounds therefor. Filing a motion to quash shall not excuse the attendance unless the board grants the motion.

Tax 201.26 Continuances.

(a) A motion for continuances, that is, a request to reschedule a hearing, shall:

(1) Be filed within 14 days of the clerk's date on the hearing notice except when a later filing is justified by accident, mistake or misfortune;

(2) State with specificity the reason for the motion and, as applicable, comply with (b), (c) and (d) below;

(3) State when the matter can be rescheduled; and

(4) If filed by an attorney, agent or municipal consultant, state:

- a. The client has been advised of the motion and the reasons therefor;
- b. The client has been sent a copy of the motion; and
- c. The client has consented to the continuance.

(b) The moving party shall comply with the requirements for seeking concurrence set forth in Tax 201.18(b). The board shall not be bound by the other party's concurrence to the motion and shall only grant a continuance in extraordinary circumstances in accordance with (g) and (h) below.

(c) If based on a conflicting court or other tribunal's hearing, the motion shall state:

- (1) The date and time, case name, docket number and court or tribunal of the other matter;
- (2) The substance of the other hearing;
- (3) Whether a continuance of the other matter has been sought and the results of that request; and
- (4) Whether anyone else could cover either the board's hearing or the other hearing.

(d) If based on inability to procure or present material evidence, by testimony or by documents, the motion shall:

- (1) State the name of the witness or document;
- (2) State the nature of the evidence;
- (3) State the reason for its unavailability;
- (4) State the steps taken to procure the evidence for the hearing; and
- (5) Include a statement that the other party has been consulted about whether the evidence can be received without live testimony.

(e) If based on illness or injury, the motion shall state sufficient medical information to allow the board to determine whether a continuance is warranted. This information shall include the nature of the illness or injury and the name and address of the treating physician.

(f) A party seeking a continuance may in the motion state that if the continuance is not granted the party will not attend the hearing. Such notice shall constitute notice under Tax 202.065(d)(1). The party shall, however, submit its Tax 202.065(d)(2) brief before the hearing.

(g) A continuance in a tax appeal shall only be granted in extraordinary circumstances, including:

- (1) Illness or injury has prevented a party or material witness from preparing for the hearing or will prevent the party from attending the hearing;

- (2) A party has a conflicting hearing in another tribunal that cannot be continued and the party cannot find a reasonable substitute for either the board's hearing or the other hearing and when justice or efficiency is served by allowing the party to be at the hearing;
 - (3) Material evidence will be unavailable for the hearing despite the party's due diligence to obtain the evidence for the hearing, and if the evidence could be introduced in writing, the other party will not consent to the introduction solely in writing or the proffering party would be prejudiced by limiting it to a written submission; or
 - (4) Such other reasons that warrant a continuance to serve justice and efficiency.
- (h) In an eminent domain proceeding, a continuance of the first hearing shall be granted for the reasons stated above or when the parties have had insufficient time to properly investigate and prepare for the hearing. Any further continuances shall only be granted in accordance with Tax 201.26(a) through (g).
- Tax 201.27 Hearings, **Parties** and Standard of Proof.
- (a) This section is intended to promote the efficient use of the board's and the parties' time at hearings. This section is not intended to impede a party's right to a hearing, but it is intended to require parties to make succinct and organized presentations.
- (b) All hearings shall be held in accordance with the New Hampshire Constitution, RSA 541-A and RSA 71-B and such other statutes applicable to the particular type of hearing.
- (c) If specific time limits are to be imposed on a hearing, the board shall state such limits in the hearing notice. Parties requiring more than the allotted time shall, within 14 days of the clerk's date on the hearing notice, file a request for additional time, specifying why the allotted time is insufficient and stating how much additional time is required. The board shall rule on such motion before the hearing begins.
- (d) The board shall enforce specific time limits by requiring parties to complete their presentations within the time limits.
- (e) In addition to the specific time limits discussed above, the board shall control the length of hearings by requiring succinct presentations and preventing parties from making irrelevant, immaterial and repetitious presentations.
- (f) Unless otherwise required by statute, the standard of proof shall be by a preponderance of the evidence.
- (g) Any person offering testimony, ~~evidence exhibits~~ or arguments shall state his/her name on the record. If the person is representing another person, the person being represented shall also be identified by name.
- (h) Testimony shall be offered in the following order:

- (1) The party(ies) bearing the ~~overall~~ burden of proof and such witnesses as they ~~party~~ may call;
- (2) The ~~party or parties~~ opposing the party(ies) ~~who bears the overall burden of proof~~ and such witnesses as they ~~party~~ may call; and
- (3) Intervenors **who have been granted that status under the provisions of RSA 541-A:32.**

(i) ~~A nonparty may seek intervention under the provisions of RSA 541-A:32.~~

(ji) Pursuant to RSA 541-A:32, when the board grants intervenor status, the order shall state the scope and limitations on the intervenor's participation as outlined in RSA 541-A:32, III.

(kj) The record shall be closed at the conclusion of the hearing unless the board leaves the record open to receive additional evidence or documents requested by the board at the hearing.

(jk) **Parties planning to have experts, including appraisers, testify at the hearing shall advise the expert to bring their complete file, including all original records and notes, to the hearing.**

(l) ~~After~~ **After the record is closed, it** shall not be reopened except as provided in Tax 201.37(f) or by specific leave of the board.

Tax 201.28 Telephonic Conferences.

(a) On its own or upon motion or request, the board may hold telephone conferences on preliminary matters and motions, provided all parties agree to the phone conference.

(b) No verbatim record shall be made of telephone conferences held under (a) above unless requested by a party.

Tax 201.29 ~~Hearing Tape Record~~ and Transcript.

(a) The board shall ~~tape~~ record all oral proceedings. **RSA 541-A:31, VII.,** ~~and such tape shall be the official record.~~ Parties may, at their own expense, arrange to have a stenographer at **any tax appeal** hearing.

~~(b) Just compensation hearings in eminent domain proceedings shall be by stenographic record, provided funds are budgeted for such record. See RSA 498-A:20. If funds are not available, the proceeding shall be tape recorded.~~

~~(eb) Tapes~~ **The recording** shall be available for inspection ~~and recording~~ as provided by RSA 71-B:7. ~~and Parties~~ **persons** shall contact the board to arrange a time ~~to inspect or record the tape for such inspection.~~ **Parties may copy a tape with their own tape and recorder without a fee, but such tape shall not be an authentic tape.**

~~(dc) Parties may~~ **Requests for** copies of **the recording shall** ~~tapes.~~ ~~Such request shall~~ be made within the RSA 71-B:7 period and shall be accompanied by the fee stated in Tax 501.01.

~~(ed) Tapes~~ **Recordings** shall be maintained for 45 days following a final decision that was not appealed. If an appeal is taken, ~~tapes~~ **recordings** shall be maintained until the case is finally adjudicated in accordance with RSA 71-B:7.

~~(fe) Since the board has no transcription services,~~ **aAny party person** wishing a **certified** transcript shall arrange and pay for the transcription of the ~~tape recording~~.

Tax 201.30 Evidence.

(a) Pursuant to RSA 71-B:7 and RSA 541-A:33, II, the board shall not be bound by the strict rules of evidence adhered to in the superior court.

(b) In ruling on objections to evidence presented, the board shall consider, but shall not be bound by, the rules of evidence, giving due regard both to the principles behind the rules of evidence and to the board's statutory function and purpose.

(c) The board shall exclude irrelevant, immaterial and unduly repetitious evidence in accordance with RSA 541-A:33, II.

Tax 201.31 Copies of Exhibits.

(a) The party offering any exhibit at a hearing shall **provide** ~~have the 1 original to be marked, and shall provide 1 copy to the other party and shall provide 2 3~~ copies to the board.

(b) Additional copies shall not be required for photographs, maps or other documents that are not easily copied.

(c) If a party fails to supply the correct number of copies, the board shall either return the document for copying by the party or copy the document and bill the party for copying costs.

Tax 201.32 Return of Exhibits.

(a) In eminent domain proceedings, exhibits shall be available for pick up once the board's just compensation report is issued. Exhibits not picked up within 90 days of the board's just compensation report shall be destroyed.

(b) In all other proceedings, upon written request, exhibits shall be available for pick up 45 days after a final, non-appealable decision has been issued. Exhibits not picked up within 90 days of the board's final, non-appealable decision shall be destroyed.

Tax 201.33 Comparable Properties.

(a) This section is intended to ensure adequate preparation for hearings without overburdening the parties. The notification of comparables enables one party to review the other party's comparables before the hearing, thereby avoiding surprise and resulting in more informed presentations to the board.

(b) Unless earlier ordered by the board or requested through discovery, any party intending to use comparable properties shall mail or hand deliver to the other party a written list of the comparables. Such notification shall be made after receipt of the hearing notice and at least 14 days before the hearing at which the comparables will be relied upon.

(c) Such notification shall state for each comparable:

- (1) The street address;
- (2) The current owner; and
- (3) If available, the tax map and lot number.

(d) If a party fails to comply with (b) above, the board shall exclude the comparables.

(e) Properties listed in the abatement application or the appeal document or otherwise submitted before the hearing notice shall not constitute notice hereunder unless such notice was made pursuant to board order or obtained through discovery.

(f) In property tax appeals, the party submitting a comparable shall, before or at the hearing, submit to the board ~~2 3~~ complete copies of the comparable's assessment-record card for the year under appeal. The party shall also provide the other party with a copy of the assessment-record card.

(g) Except when comparables are used solely in a statistical report or as part of a municipal market data survey, parties shall be limited to 10 comparables per appealed residential property and 20 comparables per appealed nonresidential property. Parties may move for leave to use more comparables, and the board

shall only grant such motion if the moving party has shown the additional comparables are necessary for the party's case and the use of the additional comparables will not be unduly repetitious or burdensome.

(h) If the parties have been ordered to submit their comparables at a prehearing conference, they shall be restricted to such comparables at the final hearing unless granted leave to submit additional comparables.

(i) The municipality shall, upon a taxpayer's request, allow a taxpayer to review and copy any municipal market data surveys.

Tax 201.34 Form of Appraisals.

(a) Appraisals are submitted to present and support a party's opinion of value or assessment in an organized and succinct format. This section is intended to ensure the board receives appraisals that are uniformly prepared with all relevant information presented in an organized way.

(b) Appraisals shall be bound or stapled and every page shall be consecutively numbered. ~~Removable clips shall not be used.~~

(c) Appraisals shall include **at a minimum:**

- (1) A table of contents with reference to numbered pages;
- (2) A description of the property, ~~and~~ the property interest appraised **and the purpose of the appraisal;**
- (3) ~~Original~~ **Color** photographs of the property and, ~~if taken, original photographs of the comparables;~~
- (4) A complete copy of the property's deed to the present owner;
- (5) A map showing the property and all comparables;
- (6) A comparison chart or grid showing units of comparison and adjustments to comparables;
- (7) If a replacement cost method is used, a complete reference to the cost manual used, including the manual's name, date and section and, if used, a copy of the calculator cost form;
- (8) A conclusion of value with a date of valuation;
- (9) A statement of whether the appraisal preparer has any financial interest in the property or in the result of the appraisal or in the board's decision, including a statement of how the preparer is being compensated for the appraisal and any testimony, such as whether the preparer is receiving a flat fee, hourly fee or percentage of abatement; and
- (10) A statement of the appraisal preparer's qualifications.

(d) Appraisals shall not contain irrelevant, superfluous or repetitive material.

(e) The board shall exclude from evidence nonconforming appraisals or it shall take such other actions as it deems appropriate.

Tax 201.35 Exchange of Appraisals and Statistical Reports.

(a) Unless ordered earlier by the board or requested through discovery, any party intending to submit an appraisal or statistical report shall submit a copy of the same to the other party after the hearing notice but not less than 14 days before the hearing.

(b) An appraisal or statistical report submitted with the abatement application, the appeal document or otherwise submitted before the hearing notice shall not constitute compliance hereunder unless:

(1) The earlier submission was required by board order or discovery; or

(2) The proffering party sends the other party a notice of the intent to use the previously provided appraisal or statistical report.

(c) If a party fails to comply with (a) above, the board shall exclude the appraisal or statistical report.

(d) In eminent domain proceedings, each party intending to submit an appraisal shall provide a copy to the board 14 days prior to a just compensation hearing.

Tax 201.36 Requests for Findings of Fact and Rulings of Law and Legal Memoranda and Decisions/Orders.

(a) Unless granted leave by the board prior to or at the hearing, all requests for findings and rulings and hearing memoranda shall be submitted to the board before the close of a hearing. When parties have leave to submit requests or memoranda after a hearing, the board shall provide the parties with a filing schedule. The party with the burden of proof shall file the first memorandum, and then the opposing party shall file its memorandum. Additional memoranda may only be filed by leave of the board, which leave shall be granted only when additional memoranda are required to allow each party to present their position and when additional memoranda will assist the board.

(b) Requests for findings and rulings shall consist of separately numbered paragraphs with only one finding or ruling per paragraph. **Unless granted leave by the board prior to or at the hearing, parties shall be limited to a combined total of 25 requests for findings of fact and/or rulings of law.** Requests that contain multiple findings or rulings shall be marked "neither granted nor denied."

~~(c) Unless granted leave by the board prior to or at the hearing, parties shall be limited to a combined total of 25~~ **Each party submitting written** requests for findings of fact and/or rulings of law **shall also submit a microsoft word compatible electronic version to clerk@btla.nh.gov.**

(d) Following the hearing, the board shall issue a decision/order with sufficient specificity to allow the parties to understand the basis of the board's decision.

(e) The board shall **retain each docket file** ~~keep decisions on file in its records~~ for at least 5 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of archives and records management of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.

Tax 201.37 Motions for Rehearing, Reconsideration or Clarification.

(a) Motions for rehearing, reconsideration or clarification or other such post hearing motion, collectively "rehearing motion", shall be filed within 30 days after the clerk's date on the board's order or decision. Filing a rehearing motion shall be a prerequisite to appealing to the supreme court in accordance with RSA 541:3 and RSA 541:6.

(b) Rehearing motions shall state with specificity all points of law or fact the moving party contends the board overlooked, misapprehended, or requires clarification.

(c) The opposing party shall not be required to file an objection to a rehearing motion. If an objection is filed, however, it shall be filed no later than 5 days after the rehearing motion is filed and simultaneously copied to all other parties pursuant to Tax 102.28 and Tax 201.14(a), respectively. The objection may include a request for additional time to respond to the rehearing motion. Once an objection is received by the board, no further filings shall be accepted unless relief is granted pursuant to Tax 201.41.

(d) Pursuant to RSA 541:5, if the board does not grant or deny the rehearing motion within 10 days, a suspension order shall be issued.

(e) Rehearing motions shall only be granted for "good reason," pursuant to RSA 541:3, and a showing shall be required that the board overlooked or misapprehended the facts or the law and such error affected the board's decision. Rehearing motions shall not be granted for harmless error, meaning errors that, if corrected, would not challenge the board's ultimate decision.

(f) A party who, without board leave, fails to attend a hearing may file a rehearing motion and request a hearing. Such motion shall only be granted if the moving party shows the failure to attend was due to accident, mistake or misfortune.

(g) Parties shall submit all evidence and present all arguments at the hearing. Therefore, rehearing motions shall not be granted to consider evidence previously available to the moving party but not presented at the original hearing or to consider new arguments that could have been raised at the hearing. Except by leave of the board, parties shall not submit new evidence with rehearing motions. Leave shall only be granted when the offering party has shown the evidence was newly discovered and could not have been discovered with due diligence in time for the hearing and when the new evidence will assist the board.

(h) If a rehearing motion is granted, the board shall either revise its decision or order without rehearing or it shall schedule a further hearing if such a hearing is required to correct the error.

Tax 201.38 Clerical Mistakes.

(a) Clerical mistakes in decisions, orders or other parts of the record, arising from oversight or omission, shall be corrected by the board at any time on its own initiative or party's motion.

(b) During the pendency of an appeal, such mistakes shall be so corrected before the appeal is docketed in the supreme court, and thereafter while the appeal is pending shall only be corrected with leave of the supreme court.

Tax 201.39 Costs.

(a) Except as otherwise provided by law, costs shall be awarded as in the superior court. The board shall order a party to pay the other party's costs when the board finds the matter was frivolously brought, maintained or defended in accordance with RSA 21-J:28-b, VI, RSA 71-B:9, RSA 76:17-b, and RSA 498-A:26-a. All awards of costs shall be limited to reasonable costs.

(b) Filing fees shall be ~~refundable~~ **reimbursed** in accordance with RSA 76:17-b, ~~and the board shall refund filing fees if the board determines a matter was frivolously brought, maintained or defended.~~ **whenever the board grants an abatement because of an incorrect tax assessment due to a clerical error or a plain and clear error of fact and not of interpretation.**

(c) If the board awards costs, the party awarded costs shall:

(1) State in writing or on the record the costs sought; and

(2) Submit documentation that shall prove the party incurred the costs being sought.

(d) Costs for a party's expert witness shall be limited to those reasonable fees incurred for the witness's testimony, but no costs shall be awarded for the witness's research or preparation in accordance with Fortin v. Manchester Housing Authority, 133 N.H. 154, 157-60 (1990).

(e) Nothing in this section shall affect the sovereign immunity of the state ~~in~~ **and** its political subdivisions.

Tax 201.40 Withdrawal/Recusal of Board Member.

(a) Upon board member initiative or upon a party's motion, a board member shall, for good cause shown or to avoid the appearance of impropriety or lack of impartiality, withdraw from any adjudicative proceeding.

(b) Pursuant to Taylor Boren v. Isaac, 143 N.H. 261 (1998), recusal shall occur when an objective, disinterested observer fully informed of the facts would entertain significant doubt about the board member's ability to be impartial or do justice in the case.

(c) If recusal is sought by a party, the party shall file a motion to the full board and shall have the burden to show why recusal is warranted.

(d) For purposes of this section, "good cause" shall include the following:

(1) The member has a personal or pecuniary interest in the matter that is immediate, definite and subject to demonstration; **or**

(2) There is evidence that would cause a reasonable person to conclude the member's impartiality can be questioned; ~~or~~.

~~(3) The matter involves the municipality where the member resides or owns property.~~

(e) Except where personal bias or prejudice exists, a board member may sit on a case where good cause for recusal exists, provided:

(1) On the record, the board member makes a full disclosure of the facts underlying the good cause;

(2) The other board members conclude the good cause is waivable and the board member can sit impartially;

(3) The parties are given an opportunity outside the board's presence to consider waiver; and

(4) The parties, free of board influence and on the record, waive recusal.

Tax 201.41 Relief from Failure to Comply with a Rule.

(a) Waivers of these rules or request for relief for failure to comply with a rule or other board order shall not be routinely granted.

(b) The board shall grant a party relief for failure to comply with a rule or board order when the failure was due to accident, mistake or misfortune or when justice otherwise requires, provided that granting the request would not be contrary to any statute or supreme court case law.

(c) Requests for relief shall:

- (1) Be in writing promptly upon discovery of the failure;
- (2) State the failure, the specific reasons why relief should be granted, and the facts supporting the request;
- (3) State that the party's failure has been corrected or state why the failure has not been corrected and, in such a case, when the failure will be corrected; and
- (4) Comply with all other rules applicable to filing documents, including sending a copy to the other party.